Supreme Court, U.S.
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No.——

IN THE
Supreme Court of the United States
OCTOBER TERM, 1996

THE CROATIAN ROMAN CATHOLIC CONGREGATION OF THE HOLY TRINITY CHURCH, AMBRIDGE, BEAVER COUNTY, PENNSYLVANIA, AN UNINCORPORATED ASSOCIATION, *et al.*,
Petitioners,

v.

THE MOST REVEREND DONALD W. WUERL, BISHOP OF THE ROMAN CATHOLIC DIOCESE OF PITTSBURGH,
Respondent.

Petition for Writ of Certiorari to the Supreme Court of Pennsylvania

---

PETITION FOR WRIT OF CERTIORARI

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49 pp

QUESTIONS PRESENTED FOR REVIEW

1. Where a state statute deprives persons of property and in its application further denies them legal standing to defend against such taking, is the refusal of state courts to consider questions of the unconstitutionality of said statute based upon said lack of standing establishing a dangerous precedent allowing state governments to deprive persons of rights and property secured by the United States Constitution, especially so where the result reached by the state's actions is contrary to a ruling of this Court?

2. In said statute, the Act of June 20, 1935, P.L. 351 § 1, 10 P.S. § 81, unconstitutional because it violates the following provisions of the United States Constitution:

(a) Article I, Section 10(1): The Act is unconstitutional as it impairs contracts set forth in deeds of trust;

(b) Article I, Section 10(3): The Act gives to a foreign sovereign without permission of Congress the power to determine and change property law in Pennsylvania;

(c) Article IV, Section 4: The Act surrenders law making authority in Pennsylvania to a foreign absolute monarch;

(d) Amendment 1: The Act by incorporating Canon Law into the civil law necessarily co-mingles church and state functions resulting in the establishment of a religion;

(e) Amendments 5 & 14: The Act deprives persons of property rights without any requirement for compensation being paid, a forum in which to be heard and be provided with due process of law?

LIST OF PARTIES

Petitioners

(1) The Croatian Roman Catholic Congregation of The Holy Trinity Church, Ambridge, Beaver County, Pennsylvania, an unincorporated association, by and through Charles A. Cvitkovic, Alfonso Vlasic, Paul Poulos, Mary Vucetich, Joseph B. Durbin, John J. Nelko and Alan L. Evanish, Trustees Ad Litem,

(2) The Congregation of Saint Mary's Roman Catholic Church of New Castle, Lawrence County, Pennsylvania, an unincorporated association, by and through Dr. Joseph L. Moretto, Paul A. Zarilla, Shirley O'Connor, Thomas C. Elliott and Edwin G. Stevens, Trustees Ad Litem,

(3) The Roman Catholic Congregation of The Divine Redeemer of Ambridge, Beaver County, Pennsylvania, an unincorporated association, by and through Leo Grandovic, Michelle L. Warmbrodt, Milton Hertneky, Richard Halicek, and Anna Marie Dzubak, Trustees Ad Litem,

Respondent

The Most Reverend Donald W. Wuerl, Bishop of the Roman Catholic Diocese of Pittsburgh

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PETITION FOR WRIT OF CERTIORARI

OPINIONS OF LOWER COURTS

1. Opinion, Court of Common Pleas of Beaver County, Pennsylvania. Unpublished March 27, 1995. Appendix pp. 30a-34a.

2. Opinion, Court of Common Pleas of Lawrence County, Pennsylvania. Unpublished, January 16, 1995. Appendix pp. 21a-28a.

3. Opinion, Court of Common Pleas of Beaver County, Pennsylvania. Unpublished, December 14, 1994. Appendix pp. 12a-19a.

4. Opinion, Superior Court of Pennsylvania, Pittsburgh District. —— Pa. Super. ——, 668 A.2d 1151 (1995) December 18, 1995. Appendix pp. 3a-9a.

5. Order, Supreme Court of Pennsylvania, Western District. Unpublished, September 11, 1996. Appendix pp. 1a-2a.

STATEMENT OF JURISDICTION

Petitioners are seeking review of a final order by the Supreme Court of the Commonwealth of Pennsylvania, the highest court of the State where the decision was rendered, on September 11, 1996, which refused to allow Petitioners leave to appeal for discretionary review of an Order of December 18, 1995 from the Superior Court of the Commonwealth of Pennsylvania. Petitioners have not requested any extension of time within which to file the instant Petition For Writ of Certiorari. The statutory provision believed to confer jurisdiction on this Court to review the aforementioned Order is 29 U.S.C. § 1257(a). This Petition is timely filed under Supreme Court Rule 13.1. and 28 U.S.C. § 2102(C)&(I).

VERBATIM REPRODUCTION OF CONSTITUTIONAL PROVISIONS, AND STATUTES INVOLVED

1. Commonwealth of Pennsylvania, Act of June 20, 1935, P.L. 351 § 1, 10 P.S. § 81. *"Church property to be subject to control of officers or authorities thereof; validation of certain charters.* Whenever any property, real or personal, has hertofore been or shall hereafter be bequeathed, devised, or conveyed to any ecclesiastical corporation, bishop, ecclesiastic, or other person, for the use of any church, congregation, or religious society, for or in trust for religious worship or sepulture, or for use by said church, congregation, or religious society, for a school, educational institution, convent, rectory, parsonage, hall, auditorium, or the maintenance of any of these, the same shall be taken and held subject to the control and disposition of such officers or authorities of such church, congregation, or religious society, having a controlling power according to the rules, regulations, usages, or corporate requirements of such church, congregation, or religious society, which control and disposition shall be exercised in accordance with and subject to the rules and regulations, usages, canons, discipline and requirements of the religious body, denomination or organization to which such church, congregation, or religious society shall belong, but nothing herein contained shall authorize the diversion of any property from the purposes, uses, and trusts to which it may have been heretofore lawfully dedicated, or to which it may hereafter, consistently herewith, be lawfully dedicated; And provided, All charters heretofore granted for any church, congregation, or religious society, without incorporating therein the requirement that the property, real and personal, of such corporation, shall be taken, held and enure subject to the control and disposition as herein provided, but which are in other respects good and valid, and shall be in all respects as good and valid, for all purposes, as if the said requirement had been inserted therein when the said charters were originally granted; and the title to all property, real and personal, heretofore be-

queathed, devised, or conveyed to such church, congregation, or religious society, or which may have heretofore been granted or conveyed by such corporation, shall be firm and stable forever, with like effect as though the said requirements had been contained in the charter of such corporation when the same was originally granted: Provided, That all property, real and personal, held by such existing corporation, shall enure, and be taken and held, subject to the control and disposition as herein provided, with like effect as though such provision had been inserted in the charter of such corporation when originally granted, any other or different provision therein notwithstanding.

2. CONSTITUTIONAL PROVISIONS

(i) Article I, Section 10, cl. 1. *"Powers denied states—Treaties—Money—Ex post facto laws—Obligation of contracts.* No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money, emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

(ii) Article I, Section 10, cl. 3. *"Tonnage—State Compacts—War.* No State shall without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

(iii) Article IV, Section 4. *"Form of State Governments—Protection.* The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

(iv) United States Constitution. Amendment 1. "*Religious and political freedom.*" Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

(v) United States Constitution. Amendment 5. *"Criminal actions—Provisions concerning—Due process of law and just compensation clauses.* No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; not shall private property be taken for public use, without just compensation.

(vi) United States Constitution. Amendment 14. Section 1. "*Citizens of the United States.* All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

This matter involves Civil Actions In Equity brought by three Roman Catholic Congregations, unincorporated associations, as are more specifically identified in the caption, by and through their respective elective Trustee Ad Litem. In the Complaints, the Congregations sought in-

junctive and other equitable relief against the Respondent who had entered upon a course of conduct that has deprived the Congregations of the beneficial enjoyment of properties that had been dedicated to their use and which had been held in trust for them by the Respondent and his predecessor Trustees. With respect to the real estate in all three instances, the properties had been acquired in trust for the Congregations prior to the enactment by the Commonwealth of Pennsylvania of the Act of June 20, 1935. The Congregations raised all of the arguments about Constitutional defects in their respective Complaints, responses to Preliminary Objections and Motions for Summary Judgment and in their Briefs in the courts of first instance, namely the Common Pleas Courts of Beaver and Lawrence Counties, Pennsylvania. These Constitutional defects were further raised in records and Briefs filed by the Congregations in the Superior Court of Pennsylvania upon their respective Appeals which were consolidated at that point. The defects were further raised by way of record and Petition upon the filing of Petitions for Allowance of Appeal with the Supreme Court of Pennsylvania.

The Constitutional issues were never addressed at any level as the lower courts and the Superior Court of Pennsylvania all held that the Congregations lacked legal standing to bring the litigation as they had lost such standing pursuant to the provisions of the Act of 1935. The Supreme Court of Pennsylvania, by refusing to accept the Appeals, allowed the Order of the Superior Court to become law in Pennsylvania.

REASONS FOR GRANTING THE WRIT

I. THE STATE COURT HAS DECIDED AN IMPORTANT FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH A PRIOR RELEVANT DECISION OF THIS COURT.

In *Jones v. Wolf*, 443 U. S. 595 (1979), this Court held that secular courts may use general principals of law to resolve church property disputes that do not involve religious questions. It was therein set forth that a Court may resolve . . . church property disputes by considering the language of deeds to property, state statutes and the constitution of the central denomination, interpreting them pursuant to general legal principals.

The Pennsylvania decisions involved herein, in effect, hold all such property disputes to be purely ecclesiastical matters and not subject to review by civil courts. The decision of the Pennsylvania Appellate Courts is therefore contrary to the decision of this Court in *Jones v. Wolf*, supra.

II. THE STATE COURT HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW THAT HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT.

The Commonwealth of Pennsylvania has enacted and judicially interpreted an Act which in its application to the Petitioners has violated rights secured to them by the United States Constitution. In effect, the legislature and courts of Pennsylvania have created a federal question as to whether they are empowered to deprive persons of their rights in property and also their rights to come into Court to defend against such takings. Prior to the enactment of the statute, there was no argument that congregations such as Petitioners herein had established property rights along with a capacity and standing to protect same in civil courts. In other words, but for the Act of 1935, the Petitioners would be found to have legal stand-

ing to come into civil court in order to protect their rights in the properties in question. The Act, as interpreted by the Courts, purportedly took away their legal standing to do so. When the Petitioners attacked that statute as being unconstitutional on its face and also in its application, the state courts would not entertain argument on those points holding that Petitioners had no standing to attack the constitutionaliy of the statute as the statute itself had taken away their standing. The Act created the perfect "Bootstrap Argument" that the Petitioners could not defeat.

By virtue of its "Bootstrap", the State has avoided the federal questions concerning the Constitutional defects of its statute and judicial holdings. The Constitutional defects pose important federal questions that must be decided by this Court. These are as follows:

(a) Article I, Section 10, Clause 1 prohibits any state from enacting a law impairing the obligation of contracts. The obligation of contracts has received protection from the United States Supreme Court in a line of cases stretching back to *Fletcher v. Peck,* 6 Cranch 87, 136 (1810). Trusts, such as the ones that were established for the Petitioners, are contractual in nature and deserving of constitutional protection. *Coolidge v. Long,* 282 U.S. 582, 75 L. Ed. 562, 51 Sp. Ct. 306 (1932). The Congregations were the beneficiaries of the trusts created and as such possessed vested, beneficial interests in the trust assets without question prior to the enactment of the Act of 1935. *Kranczunas v. Hoban,* 221 Pa. 231, 70 A. 740 (1908). Petitioners' trusts provisions were observed by the Respondent Trustee until 1993 when he undertook actions to deprive Petitioners of the beneficial enjoyment of the trust assets and further acted to wrongfully convert the trust assets to the use and benefit of third parties. Petitioners' efforts to force Respondent to observe his duties as Trustee led to the present cases.

(b) The Act gives to a foreign sovereign, without the permission of Congress, the power to determine and change property law and legal standing in Pennsylvania. In addition, the Act surrenders the State's law making authority to an absolute monarch, the ruler of Vatican City. As such, the Act violates Article I, Section 10 (3) and Article IV, Section 4 of the United States Constitution. States are not permitted to do what Pennsylvania has done and by ceding its legislative and judicial authority to the Vatican the State has effectively denied fundamental due process guaranteed to the Petitioners by Amendments 1, 5 and 14.

(c) The State, by its incorporation of the law of Vatican City and the Roman Catholic Church into the civil law of Pennsylvania has impermissibly co-mingled church and state resulting in a violation of the establishment clause of Amendment 1.

CONCLUSION

For all of the above reasons, this Court should grant the Petition of the Congregations in this matter and review the erroneous decision of the Supreme Court of Pennsylvania.

Respectfully submitted,

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Attorney for Petitioners

December 10, 1996

APPENDIX

APPENDIX

IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

Nos. 30, 31 & 32 W.D.
Allocatur Docket, 1996

THE ROMAN CATHOLIC CONGREGATION OF THE DIVINE REDEEMER, BEAVER COUNTY, PENNSYLVANIA, AN UNINCORPORATED ASSOCIATION, BY AND THROUGH LEO GRADOVIC, MICHELE L. WARMBRODT, MILTON HERTNEKY, RICHARD HALICEK AND MARIE DZUBAK, TRUSTEES AD LITEM,

Petitioners

v.

THE MOST REVEREND DONALD W. WUERL, BISHOP OF THE ROMAN CATHOLIC DIOCESE OF PITTSBURGH,

Respondent

THE CONGREGATION OF SAINT MARY'S ROMAN CATHOLIC CHURCH OF NEW CASTLE, LAWRENCE COUNTY, PENNSYLVANIA, AN UNINCORPORATED ASSOCIATION, BY AND THROUGH DR. JOSEPH L. MORETTO, PAUL A. ZARILLA, SHIRLEY O'CONNOR AND EDWIN G. STEVENS, TRUSTEES AD LITEM,

Petitioners

v.

THE MOST REVEREND DONALD W. WUERL, BISHOP OF THE ROMAN CATHOLIC DIOCESE OF PITTSBURGH,

Respondent

THE CROATIAN ROMAN CATHOLIC CONGREGATION OF THE HOLY TRINITY CHURCH, AMBRIDGE, BEAVER COUNTY, PENNSYLVANIA, AN UNINCORPORATED ASSOCIATION, BY AND THROUGH, CHARLES A. CVITKOVIC, ALFONSO VLASIC, PAUL POULOS, MARY VUCETICH, JOSEPH B. DURBIN, JOHN J. NLKO AND ALAN L. EVANISH, TRUSTEES AD LITEM,

Petitioners

v.

THE MOST REVEREND DONALD W. WUERL, BISHOP OF THE ROMAN CATHOLIC DIOCESE OF PITTSBURGH,

Respondent

Petitions for Allowance of Appeal
from the Superior Court

ORDER

PER CURIAM:

AND NOW, this 11th day of September, 1996, the above Petitions for Allowance of Appeal are denied.

A True Copy Amy J. Ceraso, Esquire
as of: September 11, 1996
Attest: /s/ Amy J. Ceraso
Deputy Prothonotary
Supreme Court of Pennsylvania

IN THE SUPERIOR COURT OF PENNSYLVANIA

No. 122 Pittsburgh 1995

THE CROATIAN ROMAN CATHOLIC CONGREGATIAN OF THE HOLY TRINITY CHURCH, AMBRIDGE, BEAVER COUNTY, PENNSYLVANIA, AN UNINCORPORATED ASSOCIATION, BY AND THROUGH, CHARLES A. CVITKOVIC, ALFONSO VLASIC, PAUL POULOS, MARY VUCETICH, JOSEPH B. DURBIN, JOHN J. NELKO, AND ALAN L. EVANISH, TRUSTEES AD LITEM,

Appellants

v.

THE MOST REVEREND DONALD W. WUERL, BISHOP OF THE ROMAN CATHOLIC DIOCESE OF PITTSBURGH, ERNEST D. PREATE, ATTORNEY GENERAL, and NANCY SOBOLEVITCH, COURT ADMINISTRATOR

Appeal from the Order Entered December 14, 1994,
in the Court of Common Pleas of Beaver County,
Civil Division, at No. 10479 of 1994

No. 254 Pittsburgh 1995

THE CONGREGATION OF SAINT MARY'S ROMAN CATHOLIC CHURCH OF NEW CASTLE, LAWRENCE COUNTY, PENNSYLVANIA, AN UNINCORPORATED ASSOCIATION, BY AND THROUGH DR. JOSEPH L. MORETTO, PAUL A. ZARILLA, SHIRLEY O'CONNOR, THOMAS C. ELLIOTT, and EDWIN G. STEVENS, TRUSTEES AD LITEM,

Appellants

v.

THE MOST REVEREND DONALD W. WUERL, BISHOP OF THE ROMAN CATHOLIC DIOCESE OF PITTSBURGH, COURT ADMINISTRATOR'S OFFICE OF PENNSYLVANIA, and THE ATTORNEY GENERAL OF PENNSYLVANIA

Appeal from the Order Entered January 10, 1995,
in the Court of Common Pleas of Lawrence County,
Civil Division, at No. 460 of 1993 CA

No. 733 Pittsburgh 1995

THE ROMAN CATHOLIC CONGREGATION OF THE DIVINE REDEEMER OF AMBRIDGE, BEAVER COUNTY, PENNSYLVANIA, AN UNINCORPORATED ASSOCIATION, BY AND THROUGH, LEO GRANDOVIC, MICHELE L. WARMBRODT, MILTON HERTNEKY, RICHARD HALICEK, and ANNA MARIE DZUBAK, TRUSTEES AD LITEM,

Appellants

v.

THE MOST REVEREND DONALD W. WUERL, BISHOP OF THE ROMAN CATHOLIC DIOCESE OF PITTSBURGH, NANCY SOBOLEVITCH, COURT ADMINISTRATOR, and ERNEST PREATE, ATTORNEY GENERAL

Appeal from the Order Entered March 27, 1995,
in the Court of Common Pleas of Beaver County,
Civil Division, at No. 11190 of 1994

BEFORE: ROWLEY, P.J., and CAVANAUGH and CIRILLO, JJ.

OPINION BY ROWLEY, P.J.: Filed: December 18, 1995

These consolidated appeals have been filed by three congregations of Roman Catholic churches whose parishes have been suppressed by appellee [1] The Most Reverend Donald W. Wuerl, Bishop of the Roman Catholic Diocese of Pittsburgh: at No. 122 Pittsburgh 1995—the Croatian Roman Catholic Congregation of the Holy Trinity Church, Ambridge, Beaver County, Pennsylvania, an unincorporated association, by and through, Charles A. Cvitkovic, Alfonso Vlasic, Paul Poulos, Mary Vucetich, Joseph B. Durbin, John J. Nelko, and Alan L. Evanish, trustees ad litem; at No. 254 Pittsburgh 1995—the Congregation of Saint Mary's Roman Catholic Church of New Castle, Lawrence County, Pennsylvania, an unincorporated association, by and through, Dr. Joseph L. Moretto, Paul A. Zarilla, Shirley O'Connor, Thomas C. Elliott, and Edwin G. Stevens, trustees ad litem; and at No. 733 Pittsburgh 1995—the Roman Catholic Congregation of the Divine Redeemer of Ambridge, Beaver County, Pennsylvania, an unincorporated association, by and through, Leo Grandovic, Michele L. Warmbrodt, Milton Hertneky, Richard Halicek, and Anna Marie Dzubak, trustees ad litem.[2]

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[1] Appellants named the Attorney General of Pennsylvania as a defendant due to their allegation of the unconstitutionality of a statute, 10 P.S. § 81, a question which the trial courts did not answer. It is not clear from the record why the Court Administrator of Pennsylvania was also named as a defendant, and, at oral argument, appellants' counsel was unable to provide any enlightenment in that regard. Neither the Attorney General nor the Court Administrator have filed briefs in this appeal.

[2] We adopt the statements of facts and procedure as set forth by the trial courts which decided these cases. *See* Opinion (Kunselman, J.), 12/14/94 (No. 122 Pittsburgh 1995); Opinion (Stranahan, J.), 1/10/95 (No. 254 Pittsburgh 1995); Opinion (Kunselman, J.), 3/27/95 (No. 733 Pittsburgh 1995).

The cases involving the parishes of Holy Trinity and Divine Redeemer were decided by the Honorable Robert E. Kunselman of the Court of Common Pleas of Beaver County. In both cases, Judge Kunselman determined that the appellants in those cases did not have standing to maintain the actions because the parishes no longer existed in light of the Decrees of Suppression. Judge Kunselman therefore sustained appellee's preliminary objections and dismissed the complaints. The case involving the parish of St. Mary's was decided by the Honorable John Q. Stranahan, Specially Presiding, of the Court of Common Pleas of Lawrence County. Judge Stranahan, in granting appellee's motion for summary judgment, also found that the appellants in that case had no standing to maintain an action. Judge Kunselman and Judge Stranahan further determined that the decision of whether to suppress a parish is an ecclesiastical matter which is not reviewable by civil courts. We agree, and accordingly, we affirm the orders sustaining the preliminary objections and dismissing the complaints at Nos. 122 and 733 Pittsburgh 1995 and the order granting summary judgment at No. 254 Pittsburgh 1995.

Before discussing the merits of the issues presented by these cases, we, like Judge Stranahan, wish to acknowledge the obvious devotion that the parishioners of the suppressed parishes have for their churches. *See* Trial Court Opinion (Stranahan, J.) at 3. That devotion, however, can neither confer upon the civil courts jurisdiction over an ecclesiastical matter nor cloak appellants in these cases with standing where none exists. Furthermore, as stated by Judge Stranahan, "It is [] not this devotion which guides this Court. We are compelled to follow the law the Commonwealth has set forth by statutes as interpreted in the case law, and it is with this in mind that we turn to the issues presently before this Court." *Id.* at 4. We add that we must also act within the parameters set by the Establishment and the Free Exercise Clauses of the

First Amendment of the United States Constitution and by Article I, Section 3 of the Pennsylvania Constitution.

Appellants first argue that the trial courts erred in determining that they do not have standing to pursue this matter. That question has already been decided by our Supreme Court in the companion cases of *Canovaro v. Brothers of the Order of Hermits of St. Augustine,* 326 Pa. 76, 191 A. 140 (1937) (dismemberment of a parish), and *Post v. Dougherty,* 326 Pa. 97, 191 A. 151 (1937) (suppression of a parish). In *Canovaro,* the Court held the following:

> Under the church law the effect of dismemberment was to cause the parish to cease to exist and to transfer its members to adjoining parishes. There were no longer any members of the original parish. The order of dismemberment was binding on the parish members. Division, dismemberment, or supression of parishes, and the effect thereof on membership are purely ecclesiastical matters, dependent upon the church law as administered by the appropriate authorities and tribunals. The effect of the dismemberment of the parish and the transfer of appellants' membership therefrom to other parishes was to deprive them of all rights as members in the church property of the parish from which they were transferred. Church membership is an ecclesiastical matter, not temporal. There is no property right in membership, and there could be no property rights in lay members except through their membership in the congregation.

Canovaro, 326 Pa. at 84-85, 191 A. at 145 (citation omitted). Similary, the Court in *Post* stated:

> [A]ny rights which the laity may have in church property can arise only out of membership in the congregation. Also that membership in a congregation and the division, dismemberment, or suppression

> of parishes are purely ecclesiastical matters subject to the church rules and controlled by the decisions of the appropriate church tribunals in so far as they do not contravene the law of the land. The act of the Holy See in suppressing the Holy Family Parish was a proper exercise of the jurisdiction conferred by the canons upon the Holy See acting through the Sacred Congregation of the Council. The reasons for its suppression, their existence in fact and sufficiency to warrant the extinction of the parish are matters for the Holy See; it alone had final and exclusive jurisdiction, and its decision must be accepted as binding on this court. We do not review the merits of a decision rendered in an ecclesiastical matter by the appropriate church tribunal or official.

Post, 326 Pa. at 101-02, 191 A. at 153. The Supreme Court's decisions in *Canovargo* and *Post* preclude the exercise of jurisdiction over these cases.

Nonetheless, appellants argue that the above cases are not controlling because they claim to be proceeding as congregations rather than as parishes. They contend that a congregation can still exist after a parish is suppressed and that a congregation would have standing to bring an action to protect its alleged property rights. We disgree that there is a relevant distinction between a congregation and a parish so as to preclude application of the holdings in *Canovaro* and *Post* to these cases, especially considering that the Court in those cases used the term "congregation."

Additionally, appellants contend that *Canovaro* and *Post* are not controlling because an earlier version of the Code of Canon Law was in effect when those cases were decided. Appellants do not explain, however, why the present version of the Code of Canon Law would compel a different result in these cases, other than to reiterate their position that a parish and a congregation are separate entities. We have already discussed that contention.

Appellants also contend that the above cases are distinguishable because appellee violated numerous provisions of the Code of Canon Law. As stated by Judge Kunselman, however, appellee is the appropriate church official to make a decision in an ecclesiastical matter, and we cannot, under *Canovaro* and *Post,* interfere with that decision.

Appellants also contend that this Court is bound by a decision of the Apostolic Signature, the highest tribunal of the Roman Catholic Church which, they assert, establishes a congregation's standing, after suppression of a parish, to challenge that suppression. We disagree, first, that this Court is bound by a decision of a church tribunal. Moreover, Canon 221, relied upon by appellants to support their argument that they have standing to proceed in civil court, states, in relevant part, "The Christian faithful can legitimately vindicate and defend the rights which they enjoy in the Church before a competent *ecclesiastical* court in accord with the norm of law." Canon 221, § 1 (emphasis added). Appellants' contention that the above provision confers standing upon them to proceed in civil court is unavailing in light of the clear language of that Canon.

For the above reasons, we affirm the trial courts' orders.

Orders affirmed.

SUPERIOR COURT OF PENNSYLVANIA
PITTSBURGH DISTRICT

No. 122 Pittsburgh 1995

THE CROATIAN ROMAN CATHOLIC CONGREGATION OF THE HOLY TRINITY CHURCH, *et al.*

VS

THE MOST REVEREND DONALD W. WUERL, *et al.*

No. 254 Pittsburgh 1995

THE CONGREGATION OF SAINT MARY'S ROMAN CATHOLIC CHURCH, *et al.*

VS

THE MOST REVEREND DONALD W. WUERL, *et al.*

No. 733 Pittsburgh 1995

THE ROMAN CATHOLIC CONGREGATION OF THE DIVINE REDEEMER OF AMBRIDGE, *et al.*

VS

THE MOST REVEREND DONALD W. WUERL, *et al.*

JUDGMENT

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the Court of Common Pleas of LAWRENCE AND BEAVER County be, and the same is hereby AFFIRMED.

BY THE COURT:

/s/ Eleanor R. Valecho
Deputy Prothonotary

Dated: December 18, 1995

IN THE COURT OF COMMON PLEAS
OF BEAVER COUNTY PENNSYLVANIA
CIVIL ACTION LAW

No. 10479 of 1994

THE CROATIAN ROMAN CATHOLIC CONGREGATION OF THE HOLY TRINITY CHURCH, AMBRIDGE, BEAVER COUNTY, PENNSYLVANIA, an unincorporated association by and through, CHARLES A. CVITKOVIC, ALFONSO VLASIC, PAUL POULOS, MARY VECETICH, JOSEPH B. DURBIN, JOHN J. NELKO and ALAN L. EVANISH, TRUSTEES AD LITEM,

Plaintiffs,

VS.

THE MOST REVEREND DONALD W. WUERL, BISHOP OF THE ROMAN CATHOLIC DIOCESE OF PITTSBURGH,

Defendants.

OPINION

KUNSELMAN, J. December 14, 1994

The matter before the Court is the Preliminary Objections of the Defendant, The Most Reverend Donald W. Wuerl, Bishop of the Roman Catholic Diocese of Pittsburgh (Bishop Wuerl) to the Plaintiffs' Complaint. The Complaint was filed by seven individuals as Trustees ad litem of the Croation Roman Catholic Congregation of the Holy Trinity Church of Ambridge (Holy Trinity). Holy Trinity's Complaint is a rambling 31 page document which contains four counts, one for injunctive relief, one for an accounting and two for declaratory judgment relief. While all the counts set forth a different form of remedy, they all are an effort to overcome the effect of a Decree of Suppression issued by Bishop Wuerl

and to preserve Holy Trinity as a separate, ethnic parish. The law has been clear for many years that the Plaintiffs have no standing to seek relief and so we wonder why Holy Trinity or counsel for Holy Trinity is devoting the time and effort to do so.

By four separate deeds between 1928 and 1942, real estate was conveyed to Right Reverend Hugh C. Boyle, Bishop of the Roman Catholic Diocese of Pittsburgh. One deed conveyed property to Bishop Boyle in trust for the Roman Catholic Church of Holy Trinity. Three deeds conveyed property to Bishop Boyle in trust for the Roman Catholic congregation of the Holy Trinity Church. Members of that church raised money to purchase the property and to subsequently construct a church and other buildings thereon. Holy Trinity was established according to the laws of the Roman Catholic Church and the Bishop of the Roman Catholic Diocese of Pittsburgh gave Holy Trinity its name and assigned its pastor. Holy Trinity's members, including the Trustees ad litem, are subject to the Canon Law of the Roman Catholic Church.

On March 11, 1994, Bishop Wuerl signed a Decree of Suppression of Holy Trinity Parish. A copy of the Decree is attached to Bishop Wuerl's Preliminary Objections. Ordinarily, we cannot go beyond the allegations in the Complaint in ruling on a Preliminary Objection. However, Holy Trinity's Complaint referred to the Decree of Supppression and Holy Trinity's Answer to Preliminary Objections admits it but denies its validity and its effect. Under these circumstances, we can properly consider the Decree and its provisions in ruling on the Preliminary Objections. *Detweiler v. Hatfield Borough School District*, 376 Pa. 555, 104 A.2d 110 (1954).

The Decree provides, in relevant part, as follows:

> Accordingly, having received the recommendations of the Cluster Task Force and Diocesan Executive Committee of the Parish Reorganization and Revital-

> ization Project and having heard the Priests Council and acting in accord with canon 515, #2, of the Code of Canon Law, I hereby suppress Holy Trinity Parish, Ambridge, Pennsylvania. This suppression shall be effective at midnight, July 1, 1994.
>
> All parishioners of Holy Trinity Parish are now to become members of the newly established territorial parish of Good Samaritan.
>
> All registers containing records of baptism, confirmation, marriage and burials hitherto preserved by Holy Trinity Parish are to be conveyed to Good Samaritan Parish, Ambridge, Pennsylvania where they will be faithfully preserved according to canon 535, paragraphs 1-5.
>
> All other assets of Holy Trinity Parish, whether movable or immovable, and all liabilities are herewith assumed by the newly erected parish of Good Samaritan in accord with the law of the Church.

Decree of Suppression, Preliminary Objections, Exhibit 2.

Holy Trinity claims it is entitled to injunctive relief because: the Decree of Suppression is void due to violations of Canon Law; the violations of Canon Law also constitute a violation of the Act of June 30, 1935, P.L. 353, 10 P.S. § 81; and because the deeds of conveyance operate to vest "real and beneficial" ownership of the real estate in the congregation or limit the beneficiary of the trust to Holy Trinity. In seeking injunctive relief, Holy Trinity has requested the Court to: (1) rescind the suppression order; (2) prohibit Bishop Wuerl from issuing a Decree of Closure of the church building and restricting the congregation's access thereto; (3) enjoin Bishop Wuerl from leasing, selling or wasting the real and personal property; (4) direct return of personal property removed from the congregation, including money, sacred vessels and books and records; and, (5) compel

Bishop Wuerl to comply with his fiduciary duties as Trustee or appoint a substitute trustee.

In addition to the foregoing requests, Holy Trinity has requested in Count II entitled "accounting" that we declare the Act of 1935 unconstitutional or that it is being applied in an unconstitutional manner and that we compel Bishop Wuerl to account for all property of Holy Trinity, including money paid or diverted to the Diocese of Pittsburgh from the inception of the congregation to the present time.

Finally, in Counts III and IV, Holy Trinity has asked the Court to declare that: (1) Holy Trinity is the legal and beneficial owner of the real estate; (2) the Act of 1935 is unconstitutional because it permits Bishop Wuerl to take Holy Trinity's property without just compensation and because its effect is to turn the power and authority to determine the law of property rights over to a ruler of a foreign sovereignty (the Pope) in violation of the United States Constitutional provisions forbidding states from entering into treaties with foreign powers, surrendering sovereignty to a foreign government, guaranteeing a republican form of government, and establishing a religion.

Bishop Wuerl's Preliminary Objections raise questions of lack of capacity and lack of jurisdiction and objects that Holy Trinity's Complaint fails to state a cause of action upon which relief can be granted. We shall sustain the Preliminary Objection as to lack of capacity and dismiss the Complaint.

We conclude that Holy Trinity lacks the capacity to bring this action because it no longer exists by reason of the Decree of Suppression. Our Supreme Court held long ago that "any rights which the laity may have in church property can arise only out of membership in the congregation; . . .". *Post v. Dougherty*, 326 Pa. 97, 101, 191 A. 151, —— (1937). Consequently, the Court said:

> "The effect of the suppression of the parish was to cause the lay members to lose their membership therein, and become members of another parish. *Having lost their membership in the parish, they have no standing to maintain a bill in equity to enforce any property rights* which they may have had in their former capacity as members of the parish, . . .".

Post v. Dougherty, 326 Pa. at 102 (Emphasis supplied). The same conclusion was reached by the Supreme Court in the companion case of *Canovaro v. Brothers of the Order of Hermits of St. Augustine*, 326 Pa. 76, 191 A. 140 (1937).

Since suppression results in loss of membership and loss of membership results in loss of standing to maintain a bill in equity, a fortiori, Holy Trinity has no standing to maintain actions for an accounting or for declaratory judgment relief as well.

In order to overcome this conclusion, Holy Trinity argues that a "parish" is merely an administrative unit of a diocese while a "congregation" is a living, ever-changing group of natural persons. The argument goes that, while Bishop Wuerl may have suppressed the "parish", he did not nor could not terminate the existence of the "congregation". Holy Tirnity further argues that our Supreme Court in *Post v. Dougherty*, supra, and *Canovaro v. Brothers of the Order of Hermits of Saint Augustine*, supra, misunderstood the difference between "parish" and "congregation" and so wrongfully decided the standing question.

This argument is ludicrous. First, Canon Law does not mention the word "congregation". Instead, it uses the word "parish" and defines that word as "a definite community of the Christian faithful established on a stable basis within a particular church". Canon 515 § 1.

Therefore, a Roman Catholic "congregation" is a parish. Moreover, it is not for this Court to say our Supreme Court was confused or misunderstood. The rule in *Post* and *Canovaro* is clear and Holy Trinity's attempt to distinguish the cases is unworthy of further discussion.

Holy Trinity further argues that since Bishop Wuerl failed to follow Canon Law the Decree of Suppression was void. Therefore, the congregation still exists and has standing to maintain this action. This argument cannot be decided by this Court since the determination thereof is purely a matter of ecclesiastical law. This was made clear by our Supreme Court in *Post* and *Canovaro*.

In *Canovaro*, the Court said: "Division, dismemberment or suppression of parishes, and the effect thereof on membership are purely ecclesiastical matters, dependent upon the church law as administered by the appropriate authorities and tribunals. The effect of the dismemberment of the parish and the transfer of appellant's membership therefrom to other parishes was to deprive them of all rights as members in the church property of the parish from which they were transferred. Church membership is an ecclesiastical matter, not temporal. There is no property right in membership, and there could be no property right in lay members except through their membership in the congregation." 326 Pa. at 84-85 (Citation omitted)

In *Post*, the Court said: "The reason for its suppression, their existence in fact and sufficiency to warrant the extinction of the parish are matters for the Holy See; it alone had final and exclusive jurisdiction, and its decision must be accepted as binding on this Court. We do not review the merits of a decision rendered in an ecclesiastical matter by the appropriate church tribunal or official." 326 Pa. at 102. Under present Canon Law, Bishop Wuerl is the appropriate church official to make a decision in an ecclesiastical matter. Under *Canovaro* and *Post*, we cannot interfere with that decision.

Notwithstanding this, Holy Trinity suggested at oral argument that we should proceed to decide the validity of the Decree of Suppression because it had no real remedy under Canon Law. It had no remedy because Bishop Wuerl failed to notify Holy Trinity of its right to appeal to a higher Church authority, the time limit to do so or even where such an appeal should be filed.

This suggestion is also not persuasive for two reasons. First, in our civil law, such time cannot be extended in the absence of fraud or some breakdown of court operations. *Dorney Park Coaster Company, Inc. v. Board of Commissioners of South Whitehall Township*, 503 Pa. 67, 468 A.2d 462 (1983). Failure to give notice where none is required is not fraud or breakdown of court operation. *Id.* Second, we believe that the question of Bishop Wuerl's need to give notice of a right to appeal under Canon Law is, itself, an ecclesiastical matter to be decided by the ecclesiastical tribunal.

Finally, Holy Trinity argues that the issue is not one of ecclesiastical law but is merely a property dispute which we can decide pursuant to *Presbytery of Beaver-Butler v. Middlesex Presbyterian Church*, 507 Pa. 255, 489 A.2d 1317 (1985). In that case, the dispute turned on whether or not the local church had ever agreed to surrender title to real estate to the national organization at the time of affiliation. The trial court found that no such agreement had been made. On appeal, the Commonwealth Court determined that the issue should be decided by the ecclesiastical tribunal of the national church organization. On appeal to the Supreme Court, the question was whether the dispute could be decided by the civil court or whether it should be decided by the appropriate church tribunal.

The thrust of our Supreme Court's decision was if the issue is purely doctrinal, it must be decided by the appropriate church tribunal. However, "in cases where the resolution of a property dispute involves no inquiry into

ecclesiastical questions, courts of this Commonwealth are to apply the same principles of law as would be applied to non-religious associations." 507 Pa. at 266.

In reading this decision, our Supreme Court relied upon *Presbyterian Church in the United States v. Blue Hull Memorial Church*, 393 U.S. 440, 89 S. Ct. 601, 21 L. Ed. 2d 658 (1969), the rule of which is referred to as the "neutral principles approach". That Court, while observing that some civil court decisions affecting church property do not jeopardize First Amendment protections, said:

> But First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice.

507 Pa. at 262, quoting from *Presbyterian Church v. Blue Hull Memorial Church*, 393 U.S. at 449, 89 S. Ct. at 606.

Thus, we conclude that the standing question turns on the resolution of Roman Catholic doctrine and practice—the suppression of a parish and the effect thereof upon membership. Neither *Presbytery of Beaver-Butler v. Middlesex Presbyterian Church*, supra, nor *Presbyterian Church v. Blue Hull Memorial Church*, supra, authorize us to decide the validity of the Decree of Suppression.

Having concluded that Holy Trinity does not have standing to maintain this action, we need not decide the remaining issues raised in the Preliminary Objections. An appropriate Order is attached hereto.

IN THE COURT OF COMMON PLEAS
OF BEAVER COUNTY PENNSYLVANIA
CIVIL ACTION LAW

No. 10479 of 1994

THE CROATIAN ROMAN CATHOLIC CONGREGATION OF THE HOLY TRINITY CHURCH, AMBRIDGE, BEAVER COUNTY, PENNSYLVANIA, an unincorporated association by and through, CHARLES A. CVITKOVIC, ALFONSO VLASIC, PAUL POULOS, MARY VECETICH, JOSEPH B. DURBIN, JOHN J. NELKO and ALAN L. EVANISH, TRUSTEES AD LITEM, *Plaintiffs,*

VS.

THE MOST REVEREND DONALD W. WUERL, BISHOP OF THE ROMAN CATHOLIC DIOCESE OF PITTSBURGH, *Defendants.*

ORDER

KUNSELMAN, J. December 14, 1994

THE MOST REVEREND DONALD W. WUERL, BISHOP OF THE ROMAN CATHOLIC DIOCESE OF PITTSBURGH,

BY THE COURT

/s/ Robert E. Kunselman
J.

IN THE COURT OF COMMON PLEAS
OF LAWRENCE COUNTY, PENNSYLVANIA
CIVIL ACTION—LAW

No. 460 of 1993 C.A.

THE CONGREGATION OF ST. MARY'S ROMAN CATHOLIC CHURCH OF NEW CASTLE, LAWRENCE COUNTY, PA. unincorporated association by and through, DR. JOSEPH L. MORETTO, PAUL A. ZARILLA, SHIRLEY O'CONNOR, THOMAS C. ELLIOTT, PETER PICCIRILLO and EDWIN G. STEVENS, Trustees Ad Litem,

Plaintiffs

vs.

THE MOST REVEREND DONALD W. WUERL,
Bishop of the Roman Catholic Diocese of Pittsburgh,

Defendant

STRANAHAN, S. J., Specially Presiding

Currently before the Court is a Motion for Summary Judgment filed on behalf of the Defendant, the Most Reverend Donald W. Wuerl, Bishop of the Roman Catholic Diocese of Pittsburgh (hereinafter Bishop Wuerl). Plaintiffs herein, an unincorporated association of parishioners of the former congregation of St. Mary's Roman Catholic Church filed the pending action, after Bishop Wuerl had issued a Decree of Suppression for St. Mary's parish, which named Bishop Wuerl as Defendant.

The facts giving rise to Plaintiffs claims began with the establishment, by Bishop Wuerl, in 1989, of the Parish Reorganization and Rivitalization Project (PRRP). The organization was founded to do a study of parishes within the Pittsburgh Diocese and the goal of this plan was to determine how to reorganize parishes to more equitably

distribute the resources of the church and to better serve the spiritual needs of Catholics in the Diocese of Pittsburgh. (Affidavit of Duch attached to Motion for Summary Judgment at paragraph 4). As a result of this reorganization process it was recommended to Bishop Wuerl that St. Mary's parish be suppressed and that a new parish be created consisting in part of former members of St. Mary's parish and that the new parish have two worship cites, one at St. Mary's and one at the Madonna of Czestozhowa.

On March 24, 1993, Bishop Wuerl issued a Decree of Suppression for St. Mary's parish to become effective at midnight on May 28, 1993. (see Affidavit of Rev. Lawrence A. DiNardo, attached to Defendant's Motion for Summary Judgment Exhibit 6). While St. Mary's Church was decreed to be suppressed the building used for worship by St. Mary's was not closed, and the former parishioners of St. Mary's who make up part of the newly formed parish of Mary, Mother of Hope continue to hold services in the structure in which they previously worshiped.

The Plaintiffs' Complaint alleges that in suppressing St. Mary's parish the Bishop violated various provisions of the Code of Canon Law. (Complaint, paragraph 33(a)-(q)). The Complaint also alleges that the Bishop has violated Pennsylvania Statutory Law the Act of June 30, 1935, P.L. 353 10 P.S. § 81, (hereinafter, the Act of 1935). Through the various allegations the Plaintiffs seek injunctive relief and request this Court to: rescind the Bishop's ecclesiastical decree whereby St. Mary's parish was suppressed; enjoin Bishop Wuerl from disposing of any of the property that is the subject of this action, real or personal; require that Bishop Wuerl turn over all of the personal property, monies, books, and records to the Plaintiffs; require the Bishop to transfer to the Plaintiffs the possession, use and access to the real and personal properties in dispute; compel to the Bishop to provide a complete accounting of all disputed properties to the Plaintiffs; enter a judgment that the Plaintiffs possess a legal estate,

the property right and a beneficial interest in the real property contained in the deeds in question; and finally, the Court should declare that the Act of 1935 is unconstitutional in substance or in application.

The Defendant's argument in support of their Motion for Summary Judgment is three-fold. First, the Defendant argues that the Plaintiffs lack capacity to bring the present action. Second, is the Defendant's argument, that this Court lacks jurisdiction because the issues in the case at bar are of a purely ecclesiastical nature and the Court is without jurisdiction to determine issues solely of a religious nature. Third, the Defendant argues that the Complaint fails to state a cause of action upon which relief can be granted.

For the reasons set forth herein below based upon the facts as applied to the case law, it is the finding of this Court, and the Order attached so reflects, that the Plaintiffs do indeed lack the capacity required to bring this action before Court and therefore this Court will grant summary judgment in favor of the Defendant, The Most Reverend Donald W. Wuerl, Bishop of the Roman Catholic Diocese of Pittsburgh.

DISCUSSION

Prior to embarking on a legal analysis, this Court, wishes to acknowledge the obvious devotion that the parishioners of the former St. Mary's have for their church.[1]

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[1] This Court, for the sake of discussion, also notes that the unincorporated association representing the congregation of St. Mary's is requesting the property for which they have worked by dedicating their time and efforts be kept from the very church toward which their efforts were focused. Further, the congregation is requesting the return of and an accounting of not only moneys they have given as individuals, for which they were most likely entitled to a tax deduction, but also the moneys which were donated by other persons no longer members of the congregation because of death, moving, or choice. Noting that some of the

It is, however, not this devotion which guides this Court. We are compelled to follow the law the Commonwealth has set forth by statutes as interpreted in the case law, and it is with this in mind that we turn to the issues presently before this Court.

Pennsylvania Rule of Civil Procedure 1035 provides that summary judgment is to be entered only if, "the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Pa.R.C.P. 1035(b); *see Penn Center House, Inc. v. Hoffman,* 520 Pa. 171, 175, 553 A.2d 900, 902 (1989); *Rutherfoord v. Presbyterian-University Hospital,* 417 Pa.Super. 316, ——, 612 A.2d 500, 502-503 (1992). The party moving for summary judgment has the burden of proving that there is no genuine issue of material fact, and all doubts as to whether the moving party has met this burden shall be resolved in favor of the non-moving party. *Penn Center,* 520 Pa. at 176, 553 A.2d at 903, *McNeal v. The City of Easton,* 143 Pa.Commw. 151, 153, 598 A.2d 638, 639 (1991); *Floyd by Floyd v. Philedelphia Housing Authority,* 154 Pa.Commw. 303, 623 A.2d 901 (1993); *Carnes v. Yingling,* 406 Pa.Super. 279, 594 A.2d 337, 339 (1991). That is to say, "all doubts as to the existence of material fact are to be resolved against the granting of summary judgment." *Penn Center,* 520 Pa. at 176, 553 A.2d at 903. Further, "the court should not enter summary judgment unless the case is free and clear from doubt." *Kelly by Kelly v. Ickes,* 427 Pa.Super. 542, 629

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donations and time were given before these parishioners were born. Is this not tantamount to saying that although we are a part of a larger organization, which we acknowledge is controlled by the Holy See, we will only abide by the laws of the church so long as it suits our purposes. If the larger organization, to which we voluntarily belong, does something we disagree with we, as a group, will take back not only our gifts and donations, but also those given by others. This argument fails logic.

A.2d 1002 (1993), *Rutherfoord,* 417 Pa.Super. at ——, 612 A.2d at 503, *Elder v. Nationwide Insurance Co.,* 410 Pa.Super. 290, ——, 599 A.2d 996, 998 (1991).

Looking first to the Defendant's issue as to whether the Plaintiffs herein have standing to bring this action before the court. To have standing, a party must (a) have a substantial interest in the subject matter of litigation, (b) the interest must be direct, and (c) the interest must be immediate and not remote in consequence. *In the Interest of Garthwaite,* 422 Pa.Super. 280, 619 A.2d 356 (1993), *Maillie v. Greater Delaware Valley Health Care, Inc.,* 156 Pa. Commw. 582, 628 A.2d 528 (1993). Generally, for a party to maintain a challenge to an official order or action his rights must have been invaded or infringed upon. *Sierra Club v. Hartman,* 529 Pa. 454, 605 A.2d 309 (1992). The question for the Court therefore becomes does a party, in this instance the former congregation of St. Mary's church, have rights in property that the law can protect. In the case *sub judice,* the answer to this question is that there is no rights in the property of the church which the law can protect. The interest that the Plaintiffs seek to protect must be within a zone of interest sought to be protected by a statute or consitutional guarantee in question. *In the Interest of Garthwaite,* 422 Pa.Super. at ——, 619 A.2d at 358, (quoting *South Whitehall Township Police Serv. v. South Whitehall Township,* 521 Pa. 82, 86-87, 555 A.2d 793, 795 (1989)).

The statute in question, the Act of 1935, also referred to as the Lay-Control of Church Property Act, reads in relevant part as follows:

> Whensoever any property, real or personal, has heretofore been or shall hereafter be bequeathed, devised, or conveyed to any acclesiastical corporation, bishop, ecclesiastic, or other person, for the use of any church, congregation, or religious society, for or in trust for religious worship or . . . The same

> shall be taken and held subject to the control and disposition of such officers or authorities of such church, congregation, or religious society, having a controlling power according to the rules, regulations, usages, or corporate requirements of such church, congregation, or religious society, which control and disposition shall be exercised in accordance with and subject to the rules and regulations, usages, canons, discipline and requirements of the religious body, denomination or organization to which such church, congregation or religious society shall belong, but nothing herein contained shall authorize the diversion of any property from the purposes, uses, and trust to which it may have been heretofore lawfully dedicated or to which it may hereafter consistently herewith be lawfully dedicated.

10 P.S. § 81.[2]

The Supreme Court of Pennsylvania has, without deviation, held that this Statute requires properties attached to churches formerly in union with hierarchical governed denominations remain with the denomination. *Presbytery of Beaver-Butler v. West Middlesex Presbyterian Church*, 507 Pa. 255, 489 A.2d 1317 (1885), *cert. denied.* 474 U.S. 888. Quite simply stated, the Statute in question provides the local church properties to be held and controlled according to the rules and regulations and requirements of the organization to which the local church belongs. By the terms of the statute, the control of any local congregation over property conveyed for its use is

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[2] The Act of April 26, 1855 P.L. 328 § 7 made church property subject to the control and disposition of the lay members as trustee. *Canovaro v. Brothers of the Order of Hermits of St. Augustine*, 191 A. 140, 326 Pa. 76 (1937). That Act was last amended by theh Act of June 20th, 1935, P.L. 353, 10 P.S. § 81. By the terms of the statute as it was most recently amended, church property is deemed to be held subject to the control and disposition of the church authorities.

to be exercised in accordance with and subject to the rules, regulations, usages, canons, disciplinary requirements of the religious body or organization to which the local congregation belongs. "Hence Trustees to whom property has been conveyed for the use of such congregation take and hold the property subject not to the control of the congregation alone, but to that of the denomination as well." *Church of God at Markleysburg v. Church of God at Markleysburg*, 355 Pa. 478, ——, 50 A.2d 357, 360 (1947).

In the often cited companion cases of *Post v. Dougherty*, 326 Pa. 97, 191 A. 151 (1937), and *Canovaro v. Brothers of the Order of Hermits of St. Augustine*, 326 Pa. 76, 191 A. 140 (1937), the Supreme Court dealt with what rights the laity retains, under the Act of 1935, in property of the church. In *Post* the court held that the rights of the laity in church property only arise out of membership in the congregation. Further, the court held that suppression of a church is purely an ecclesiastical matter which is subject to church rules and controlled by decisions of appropriate church officials. The reason for suppressing a church, its existence in fact, and sufficiency to warrant the extinction of the parish are matters for the Holy See. *Post v. Dougherty*, 326 Pa. 97, 101, 191 A. 153. The courts interpretation is that the effect of suppressing a parish is to cause the lay members to lose their membership in that specific parish. Those members of the suppressed parish may become members of another parish. However, once the parishioners lose their membership in the suppressed parish, they have no standing to maintain a bill in equity to enforce any property rights which they may have had in their former capacity as members of said suppressed parish. *Post*, 326 Pa. at 102, 191 A. at 153. In the companion case, *Canovaro*, the Supreme Court had previously held that the disposition of property of a dismembered parish remains with the church and then *Post* held the property of a suppressed parish remains with the Roman Catholic Church.

The Supreme Court's later decisions in *Markleysburg* and *Presbytery of Beaver-Butler*, further support the notion that property, once given to the church, becomes property of the entire denomination not merely the congregation for which it is held in trust.

It is clear, by the Statute of 10 P.S. § 81 and the case law which has followed its enactment, these Plaintiffs, as an unincorporated association of parishioners of the former St. Mary's Parish, lost standing to maintain this suit once their parish was suppressed. Their parish was suppressed by Bishop Wuerl effective May 28, 1993. Though this suit was filed by Writ of Summons on May 14, 1993, the point essentially became moot on May 28, 1993 when the church was suppressed. Moreover, based upon the case law once property, real or personal, is bequeathed, devised, or conveyed in trust to the church it is thereafter controlled by the heirarchy of the church for benefit thereof regardless of whether the church is suppressed.

The Roman Catholic Church's decision whether or not to suppress a parish or congregation, is an ecclesiastical issue which is not reviewable by this Court. In being suppressed the Parish of St. Mary's and its parishioners lost their standing and the right to sue in equity. It being this Court's determination that the Plaintiff's lack standing, this Court need not and will not continue on and entertain the merits of the other arguments offered by the Plaintiffs.

HENCE THIS ORDER.

ORDER

AND NOW, January 16, 1995, IT IS THE ORDER of this Court that Defendant, The Most Reverend Donald W. Wuerl, Bishop of the Roman Catholic Diocese of Pittsburgh's Motion for Summary Judgment is hereby GRANTED.

Based upon the above opinion, Plaintiffs' Petition for Preliminary and Permanent Injunctions is hereby DENIED.

BY THE COURT:

/s/ John Q. Stranahan
JOHN Q. STRANAHAN
Senior Judge
Specially Presiding

IN THE COURT OF COMMON PLEAS
OF BEAVER PENNSYLVANIA
CIVIL ACTION LAW

No. 11190 of 1994

THE ROMAN CATHOLIC CONGREGATION OF THE DIVINE REDEEMER OF AMBRIDGE, BEAVER COUNTY, PENNSYLVANIA, an unincorporated association by and through LEO GRANDOVIC, MICHELE L. WARMBRODT, MILTON HERTNEKY, RICHARD HALICEK, and ANNA MARIE DZUBAK, TRUSTEES AD LITEM,

Plaintiffs,

VS.

THE MOST REVEREND DONALD W. WUERL, BISHOP OF THE ROMAN CATHOLIC DIOCESE OF PITTSBURGH,

Defendant.

OPINION

KUNSELMAN, J. March 27, 1995

This case is before the Court on the Preliminary Objections of the Defendant, the Most Reverend Donald W. Wuerl, Bishop of the Roman Catholic Diocese of Pittsburgh (Bishop Wuerl) to the Plaintiffs' Complaint. The Complaint was filed by five individuals as Trustees Ad Litem to the Roman Catholic Congregation of The Divine Redeemer of Ambridge (Divine Redeemer). They have been members of Divine Redeemer and have been authorized by some members to proceed with this litigation. Their Complaint contains one count for injunctive relief, one count for an accounting and two counts for declaratory judgments. While the four counts seek different forms of a remedy, they all are an effort to overcome the effect of a Decree of Suppression issued by Bishop Wuerl and

to preserve Divine Redeemer as a separate, ethnic parish of Slovakian nationality and traditions.

Bishop Wuerl's Preliminary Objections raise questions of lack of capicity and lack of jurisdiction as well as an objection that the Complaint fails to state a cause of action upon which relief can be granted. We shall sustain the Preliminary Objection as to lack of capacity and dismiss the Complaint.

At oral argument on the Preliminary Objections counsel for both Divine Redeemer and Bishop Wuerl agreed that, with three exceptions, the case at bar is factually substantially identical to a companion case we recently decided. The companion case is *The Croation Roman Catholic Congregation of the Holy Trinity Church, Ambridge vs. The Most Reverend Donald W. Wuerl, Bishop of the Roman Catholic Diocese of Pittsburgh*, 50 Beaver Co. Legal Journal 88 (1994). A copy of the Opinion of the Court is annexed hereto as an Appendix. The exceptions do not affect the result. They include: The Divine Redeemer Church building was closed and it has remained closed while the Holy Trinity Church building has remained open as a worship site; the earliest deed to a portion of Divine Redeemer real estate was from lay Trustees of the congregation to Bishop Canevin as Trustee of Divine Redeemer while no conveyances of Holy Trinity real estate were from lay Trustees; and, Divine Redeemer pursued and exhausted appeals to ecclesiastical tribunals to consent Bishop Wuerl's suppression Order while Holy Trinity pursued no such appeal.

In the *Holy Trinity case*, we held that Bishop Wuerl's Decree of Suppression resulted in the Plaintiff's loss of membership in the parish and that, pursuant to Pennsylvania Law, loss of membership results in loss of standing to enforce any property right they might have had in the real estate. At oral argument in the case at bar, counsel for Divine Redeemer stated that present Canon Law is

different than that which existed at the time our Supreme Court decided the cases we relied upon in *Holy Trinity*. He stated that present Canon Law gives individual parishioners standing.

In support of his argument, he referred us to documents attached to his answer to Preliminary Objections. They included: (1) an unofficial translation of a decision of the Apostolic Signatura (Exhibit 1 attached thereto); (2) an article entitled "The Vindication of Parish Rights" written by James A. Coriden (Exhibit 2 attached thereto); and (3) an article entitled "The Rights of Parishes" written by James A. Coriden (Exhibit 3 attached thereto).

All of these documents refer to the standing of individual parishioners to appeal and pursue their rights in ecclesiastical courts. It can be assumed that individuals have such standing under Canon 221.

> The Christian faithful can legitimately vindicate and defend the rights which they enjoy in the Church before a competent ecclesiastical court in accord with the norm of law.

Canon 221 § 1.

At oral argument, counsel for Divine Redeemer stated that the foregoing principle implies that the congregation still exists and therefore has standing to pursue this litigation. In his supplemental brief, he further argues that, since our statutory law "incorporates the existing Canon Law into its terms and provisions" (Supplemental brief, P.3) the standing given the Plaintiffs under Canon Law also gives standing to the Plaintiffs in this civil action.

These arguments are not persuasive for several reasons. First, the statute referred to does not "incorporate" Canon Law. Its effect is merely

> to make supreme the internal rules, regulations, and usages of religious societies respecting the control of

> their property . . . . The Act of 1935 recognizes the binding effect of the internal laws of religious societies regarding the power of control and disposition of church property.

Canovaro v. Borthers of the Order of Hermits of St. Augustine, 326 Pa. 76, 88, 191 A. 140, 147 (1937).

Second, we believe counsel for Divine Redeemer has mistakenly equated standing in the ecclesiastical courts with standing in the civil courts. The decision of the Apostolic Signatura that conferred standing to individual parishioners may have recognized them to have sufficient interests to appeal a decision to suppress a parish to the ecclesiastical courts. But that decision does not necessarily establish standing in civil court. The concept of standing in civil court refers to who may sue or be sued. *Game Commission v. Department of Environmental Resources*, 521 Pa. 121, 555 A.2d 812 (1989). "As a general matter, the core of the concept of standing is that a person who is not adversely affected in any way by the matter he seeks to challenge is not aggrieved thereby and has no right to obtain a judicial resolution of his challenge." Id. at 127. Thus, in order to have legal standing, one must have an interest in the action which is substantial, direct and immediate. *Sierra Club v. Hartman*, 529 Pa. 454, 605 A.2d 309 (1992).

And, for an association to have representational standing, it must show that any one or more of its members sustained a substantial, direct and immediate injury. *1000 Grandview Association, Inc. vs. Mt. Washington Associates*, 290 Pa. Superior Ct. 365, 434 A.2d 796 (1981). In the case at bar, it is clear that Divine Redeemer is seeking "the recovery of the real and personal property of the Plaintiffs which was being held for them by the Bishop-Trustee . . . . [and the recognition by this Court of] the legal title to real and personal property and order the return of a trust to and for the beneficiaries of that trust." (Plaintiffs' Supplemental Brief, P.5.).

This brings us to our third reason for rejecting Divine Redeemer's arguments on standing. Since Divine Redeemer is claiming an interest in the real and personal property of the parish, it must show that its members have an ownership interest in the property. In *Canovaro*, supra, and *Post v. Daugherty*, 326 Pa. 97, 191 A. 151 (1937), our Supreme Court made that clear.

Present Canon Law provides that a parish continues in existence until it is suppressed. "A juridic person (which includes a parish) is of its nature perpetual; nevertheless it is extinguished if it is legitimately suppressed by a competent authority or has ceased activity for a hundred years; . . ." Canon 120-§ 1. Both articles written by James A. Coriden and attached as Exhibits 2 and 3 to Divine Redeemer's Answer to Preliminary Objections acknowledge this rule.

Since parishioners' rights, if any, in the church property can only arise out of membership in the parish and since suppression of the parish results in their loss of membership, they have no standing under *Canovaro* and *Post* and present Canon Law does not change those decisions.

For the foregoing reasons and for the reasons we set forth in *The Crotian Roman Catholic Congregation of the Holy Trinity vs. The Most Reverend Donald A. Wuerl, Bishop of the Roman Catholic Diocese of Pittsburgh*, we will enter an Order dismissing the Complaint.

IN THE COURT OF COMMON PLEAS
OF BEAVER COUNTY PENNSYLVANIA
CIVIL ACTION LAW

No. 11190 of 1994

THE ROMAN CATHOLIC CONGREGATION OF THE DIVINE REDEEMER OF AMBRIDGE, BEAVER COUNTY, PENNSYLVANIA, an unincorporated association by and through LEO GRANDOVIC, MICHELE L. WARMBRODT, MILTON HERTNEKY, RICHARD HALICEK, and ANNA MARIE DZUBAK, TRUSTEES AD LITEM,

Plaintiffs,

VS.

THE MOST REVEREND DONALD W. WUERL, BISHOP OF THE ROMAN CATHOLIC DIOCESE OF PITTSBURGH,

Defendant.

ORDER

KUNSELMAN, J. March 27, 1995

The Preliminary Objection raising a question of lack of capacity is sustained and the Complaint is dismissed. The Lis Pendens is stricken.

BY THE COURT

/s/ Robert E. Kunselman
J.

Supreme Court, U.S.
FILED
JAN 13 1997
CLERK

No. 96-937

In The

Supreme Court of the United States

October Term, 1996

THE CROATIAN ROMAN CATHOLIC CONGREGATION OF THE HOLY TRINITY CHURCH, AMBRIDGE, BEAVER COUNTY, PENNSYLVANIA, AN UNINCORPORATED ASSOCIATION, et al.,

Petitioners,

v.

THE MOST REVEREND DONALD W. WUERL, BISHOP OF THE ROMAN CATHOLIC DIOCESE OF PITTSBURGH,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of Pennsylvania

RESPONDENT'S BRIEF IN OPPOSITION

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COUNTER-STATEMENT OF QUESTIONS PRESENTED

1. Do some former members of the parochial congregations of three Roman Catholic Churches, which have ceased to exist according to the laws of the Roman Catholic Church, have standing in civil court to assert property rights which they claim to have had in their capacity as members of those former parochial congregations?

2. Would a civil court lack jurisdiction to decide the church property issues involved in this action on the basis of "neutral principles of law" because those issues are inextricably intertwined with purely ecclesiastical matters?

3. Could the relief requested by Plaintiffs be granted without violating the Free Exercise Clause of the First Amendment to the United States Constitution and the Religious Freedom Restoration Act of 1993?

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COUNTER-STATEMENT OF THE CASE

This case involves three church property disputes brought by certain individuals who claim to represent the Roman Catholic Congregations of three Roman Catholic Churches within the Diocese of Pittsburgh against the Most Reverent Donald W. Wuerl, the Roman Catholic Bishop of the Diocese of Pittsburgh.

All of the Churches involved were established according to the laws of the Roman Catholic Church. The Bishop of Pittsburgh gave each Church its name, assigned a pastor to it and defined the membership of the Roman Catholic Congregation of the Church.

These disputes arose out of a lengthy diocesan-wide parish reorganization and revitalization process which was begun in 1989. That process was undertaken to determine how best to reorganize the parishes within the Diocese so as to more equitably distribute the resources (financial, material and human) of the Church and to better serve the spiritual needs of all Catholics in the Diocese of Pittsburgh. *See,* Duch Affidavit, filed in support of Motion for Summary Judgment and incorporated in the Reproduced Record filed with Superior Court in *St. Mary's v. Wuerl,* No. 254 PGH 95, at R.671a-675a.

As a result of this diocesan-wide reorganization project, Bishop Wuerl issued Decrees of Suppression for several parishes, including Holy Trinity, Divine Redeemer, and St. Mary's. Those decrees provided that all members of the parochial congregations of the suppressed parishes would become members of newly established successor parishes. The Decrees also provided that all assets and liabilities of those suppressed parishes were to be

assumed by the successor parishes in accord with the law of the Church. All official Church records also were conveyed to the successor parishes to be faithfully preserved according to Canon Law.

The Church building of what was formerly Divine Redeemer was closed. However, the Church buildings of what were formerly Holy Trinity and St. Mary's parishes remain open for worship services as part of their successor parishes.

Displeased with the Bishop's decisions to suppress these parishes and reassign them to successor parishes, Petitioners filed suit in civil court against Bishop Wuerl. They claimed to be members of "The Croation Roman Catholic Congregation of The Holy Trinity Church," "The Roman Catholic Congregation of The Divine Redeemer," and "The Congregation of St. Mary's Roman Catholic Church," and to have standing to bring these actions on behalf of those congregations.

The Petitioners alleged in each case that they had acquired ownership of certain real properties described in deeds attached to the Complaints. None of these deeds, however, conveyed the real properties in question to Roman Catholic Congregations (the entities on whose behalf Petitioners claim to act). Rather, those deeds conveyed properties to the Roman Catholic Bishop of Pittsburgh and his successors as Trustees.

The Petitioners also claimed that certain personal property (e.g., statues, religious articles) belonged to them in trust. However, the record contains no evidence of any trust instruments relating to any of the personal property at issue here.

The Petitioners alleged that, in suppressing the parishes, the Bishop violated various provisions of the Code of Canon Law – the governing ecclesiastical law of the Roman Catholic Church. They also alleged that in failing to comply with Canon Law, the Bishop violated a Pennsylvania statute, the Act of June 30, 1935, P.L. 353, 10 P.S. §81 (hereinafter "the Act of 1935").

Having claimed numerous violations of church law and various violations of state law stemming from these alleged violations of church law, the Petitioners sought injunctive relief and requested that the trial court issue an order: 1) rescinding the Bishop's ecclesiastical decisions and decrees which suppressed the parishes; 2) prohibiting the Bishop from issuing a decree of closure for the church buildings or restricting Petitioners' access thereto; 3) enjoining the Bishop from disposing of any of the property in question, including transferring those properties to the respective named successor parishes in accordance with the laws of the Roman Catholic Church; and 4) requiring the Bishop to transfer all personal properties, monies, books and records of the suppressed parishes to the Petitioners. If the Bishop should fail to comply with such order, the Petitioners also requested the civil courts to appoint a substitute trustee who would succeed to the "fiduciary duties" of Bishop Wuerl.

In addition to this relief, the Petitioners requested the courts to compel the Bishop to provide a complete accounting of all the disputed properties. Alternatively, they requested the court to declare that the Act of 1935 violated various provisions of the United States Constitution, and to declare that Petitioners possessed a legal estate, a property right and a beneficial interest in the real

and personal properties which are the subject of these disputes.

Bishop Wuerl responded by claiming: 1) that Petitioners lacked standing to bring these actions because the Roman Catholic Congregations to which they claimed to belong and which they claimed to represent had ceased to exist upon their suppression and Petitioners were now members of other successor parishes; 2) civil courts lack jurisdiction to resolve the purely ecclesiastical issues presented for review; and 3) none of the relief could be granted without violating the Constitutions of the United States and Pennsylvania and the Religious Freedom Restoration Act of 1993, 42 U.S.C. §2000bb, *et seq.*

Relying on a long and unbroken line of Pennsylvania Supreme Court precedent, the trial and Superior Courts dismissed these actions based on Petitioners' lack of standing and based also on the fact that civil courts lack jurisdiction to review ecclesiastical decisions concerning the suppression of parishes and the effect thereof on church membership. Petitioners appealed those adverse judgments to the Pennsylvania Supreme Court and that Court denied review.

SUMMARY OF ARGUMENT

Pennsylvania law ("the Act of 1935") provides that church properties are to be controlled and disposed of according to church law. Petitioners claim to be members of the parochial congregations of three Roman Catholic churches and to have standing to assert property rights on behalf of those parochial congregations as against the

Roman Catholic Bishop of Pittsburgh. The Roman Catholic Church has declared that the entities to which Petitioners claim to belong no longer exist, due to their valid suppression by ecclesiastical decrees, and that Petitioners are now members of new successor parishes which were established by valid ecclesiastical decrees.

In short, Petitioners are not members of the parochial congregations to which they claim to belong and, accordingly, they lack standing to bring this action on behalf of those congregations.

The state courts so held, and the central issue presented for review in this Court is whether Petitioners lack standing to assert any property rights on behalf of the parochial congregations to which they previously belonged. Every claim made by Petitioners in an attempt to support their standing to bring this action is inextricably intertwined with and draws into question the practices, doctrines and laws of the Roman Catholic Church and would require civil courts to make judgments regarding those purely ecclesiastical issues.

The decision of the state court is in complete conformity with prior decisions of this Court and, indeed, is mandated by those decisions. Petitioners' lack of standing to claim any property rights in the church properties in question is not limited to the state law questions which already have been resolved. They also lack standing to raise each of the federal constitutional issues which they have presented for review.

Moreover, even if Petitioners had standing to raise the federal questions presented for review, there is no

merit to the arguments put forward by Petitioners regarding alleged violations of various provisions of the United States Constitution.

REASONS FOR DENYING THE PETITION

Petitioners argue that this Court should grant review for two reasons. First, they argue that the decision of the Pennsylvania court to dismiss their claims based on lack of standing and lack of jurisdiction to decide ecclesiastical issues is in conflict with this Court's decision in *Jones v. Wolf*, 443 U.S. 595 (1979). Petition at 6. Next they argue that Pennsylvania's church property law (the Act of 1935) is unconstitutional under various provisions of the United States Constitution and that these are important federal issues which should be addressed by this Court. *Id.* at 6-8. For the reasons set forth in greater detail below, this Court should deny review.

I. PETITIONERS LACK STANDING TO BRING THIS ACTION AND THE DECISION OF THE PENNSYLVANIA COURT IS IN COMPLETE CONFORMITY WITH THE DECISIONS OF THIS COURT.

The Pennsylvania Supreme Court long ago pointed out that "any rights which the laity may have in church property can arise only out of membership in the congregation." *Post v. Dougherty*, 326 Pa. 97, 101, 191 A. 151, 153 (1937). That Court also recognized that church membership is purely an ecclesiastical matter for determination by church authorities; not by civil courts. *Id.* The Court

noted that "[u]nder the Roman Catholic canons the suppression of a parish renders it extinct." *Id.* at 99, 191 A. at 152. Accordingly, the Court continued:

> The effect of the suppression of the parish was to cause the lay members to lose their membership therein, and become members of another parish. Having lost their membership in the parish, they have no standing to maintain a bill in equity to enforce any property rights which they may have had in their former capacity as members of the parish.

Id. at 102, 191 A. at 153. *See also, Canovaro v. Brothers of Order of Hermits of St. Augustine*, 326 Pa. 76, 84-85, 191 A. 140 (1937) ("Division, dismemberment, or suppression of parishes, and the effect thereof on membership are purely ecclesiastical matters, dependent upon the church law as administered by the appropriate authorities and tribunals."); *St. Peter's Roman Catholic Parish v. Urban Redevelopment Authority of Pittsburgh, et al.*, 394 Pa. 194, 198, 146 A.2d 724, 726 (1958), *cert. denied*, 359 U.S. 435 (1959) ("The dispositive rule is that plaintiff, as a parish or congregation, has no standing to sue. The Bishop owns the property, in trust for the parish, and alone may dispose of it in accordance of the Canons of the Roman Catholic Church.").

The Superior Court, in rendering its decision in these consolidated cases, relied upon the above Pennsylvania Supreme Court precedent in holding that Petitioners lacked standing to bring those actions. *Croatian Roman Catholic Congregation v. Wuerl*, 447 Pa. Super. 208, 668 A.2d 1151 (1995), *appeal denied*, ___ Pa. ___, 683 A.2d 884 (September 11, 1996).

The above state court decisions are in complete conformity with those of this Court which prohibit civil courts from making judgments regarding purely ecclesiastical matters. *See e.g., Serbian Eastern Orthodox Diocese for the United States of America and Canada, et al. v. Milivojevich, et al.*, 426 U.S. 696 (1976); *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94 (1952); and *Watson v. Jones*, 13 Wall. 679 (1871).

Indeed, those decisions were mandated by the above decisions of this Court which protect the right of religious bodies to self-governance and prohibit civil authorities from intruding upon that right. Among the matters described by the *Watson* Court as "strictly and purely ecclesiastical" and within the purview of ecclesiastical tribunals, are matters which concern "ecclesiastical government." *Id.* In matters such as these, the "rule of deference" must apply.

Ecclesiastical determinations regarding church membership lie at the core of religious self-governance. The right of religious societies to make such determinations without governmental interference is protected by the Free Exercise Clause of the First Amendment.

Petitioners suggest that this Court's decision in *Jones v. Wolf* requires that the "rule of deference" be disregarded and "neutral principles" be applied when a case involves church property. That case, however, stands for no such proposition. *Jones* holds only that, in church property disputes, a "severly circumscribed" exception to civil court non-intervention may apply where the issues are capable of being determined without resolution of underlying ecclesiastical questions. 443 U.S. at 602-603.

Where ownership of church property is to be determined "according to the 'laws and regulations' of the [church], then the First Amendment requires that the [state] courts give deference to the [church's] determination." *Id.* at 609.

The issues presented for review in this case are anything but devoid of ecclesiastical questions. The very standing of Petitioners to bring this action turns upon the meaning and effect of the Canon Law of the Roman Catholic Church.

Petitioners have claimed that they are members of the parochial congregations which they claim to represent and that they have property rights based on such membership. They base these claims on assertions that the Bishop's ecclesiastical decrees of suppression were invalid because he violated numerous provisions of Canon Law in issuing those decrees.[1] Thus, Petitioners claim that the parochial congregations to which they previously belonged continue to exist and that they continue to be members of those congregations.

Bishop Wuerl has asserted that, under the laws of the Roman Catholic Church, Petitioners are not members of the parochial congregations which they claim to represent. Moreover, the Bishop has also asserted that, under Canon Law, even if Petitioners continued to be members

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[1] Petitioners' ecclesiastical appeals questioning the validity of Bishop Wuerl's decrees were unsuccessful.

of those parochial congregations, they still would be prohibited from bringing these actions and therefore lack standing.[2]

If Petitioners are not members of those congregations, they can claim no property rights whatsoever. The same is true if members of Roman Catholic churches do not acquire any property rights by virtue of their membership.[3]

Under this Court's prior precedent, civil courts must defer to ecclesiastical tribunals regarding the meaning and effect of ecclesiastical laws. The Church has determined that, pursuant to its laws, Petitioners are not members of the congregations they claim to represent and that they would not have any property rights even if they were. The civil courts were constitutionally bound to defer to these ecclesiastical determinations. Accordingly, Petitioners have no protectable property rights and lack sufficient standing to satisfy Article III which requires the

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[2] Even if Petitioners continued to be members of those congregations, the laws of the Roman Catholic Church prohibit individual members of a congregation from suing on behalf of the parochial congregation. Only the Pastor of the parish is entitled to file suit on behalf of a parish congregation. See, Motion for Summary Judgment, incorporated in the Reproduced Record filed with the Superior Court, in *St. Mary's v. Wuerl*, No. 254 PGH 95, at ¶¶42-46, R.601a-602a. Moreover, under Canon Law, even a pastor is prohibited from initiating an action in civil courts without the consent of the Bishop. *Id.*

[3] According to the Canon Law of the Roman Catholic Church, only juridic persons may own church property, see, DiNardo Affidavit at ¶¶12-13, R.621a, and Petitioners have conceded that they are not juridic persons. Thus, they would not have standing to assert rights to the properties in question.

existence of a case or controversy for the exercise of this Court's jurisdiction.

II. THE STATE COURT HAS NOT RENDERED ANY DECISION WITH RESPECT TO THE FEDERAL QUESTIONS RAISED BY PETITIONERS, AND THE PENNSYLVANIA CHURCH PROPERTY LAW IS CONSTITUTIONAL.

A. The State Court Did Not Address Any Federal Questions Raised by Petitioners.

Petitioners are mistaken in claiming that the state court decided important federal questions which should be reviewed by this Court. Petition at 6. To the contrary, the state court never reached any of the federal questions raised by Petitioners. Rather, it dismissed the actions based on Petitioners' lack of standing. Having determined that Petitioners were not members of the congregations to which they claimed to belong, the state court simply refused to proceed further.

B. Pennsylvania's Church Property Law Is Constitutional.

Petitioners argue that this Court should grant review for the following reasons. First, they assert that prior to enactment of the Act of 1935, they had "established property rights" and would have had standing to bring this action. Petition at 6. They next claim that their lack of standing is due to the operation of the Act of 1935, and they suggest that the Act must be held unconstitutional

because it has deprived them of their standing in violation of their due process rights to defend their property interests. Petition at 6-8. Finally, they claim that the Act is unconstitutional because it: 1) operates to impair the obligations of contracts in violation of Article I, §10, cl. 1 of the Constitution (Petition at 7); 2) gives a foreign sovereign (Vatican City) the power to change Pennsylvania law, in violation of Article I, §10, cl. 3 and Article IV, §4 of the Constitution (Petition at 8); and 3) violates the Establishment Clause of the First Amendment by incorporating the law of the Roman Catholic Church into the civil property law.

As set forth below, each of these arguments is premised upon erroneous assumptions and lacks merit. Thus, they are not worthy of review by this Court.

1. Contrary to Petitioners' assertions, their lack of standing is not due to the operation of the Act of 1935. Rather, it is due to the operation of the ecclesiastical decrees of suppression issued by Bishop Wuerl which deprived them of membership in the congregations which they claim to represent.

St. Casimir's Polish Roman Catholic Church's Case, 273 Pa. 494, 117 A. 219 (1922), involved similar circumstances where a Roman Catholic Parish was divided by ecclesiastical decree and some of the former members were assigned to new parishes. That case arose prior to enactment of the Act of 1935, but the outcome was the same. The Court held that the former members lacked standing to bring the action due to their loss of church membership by virtue of ecclesiastical decree.

Thus, it is clear that Petitioners would have lacked standing to bring this action under Pennsylvania law both before and after enactment of the Act of 1935. Moreover, because Petitioners' lack of standing is due to the private actions of the Bishop, any claim that their due process rights have been violated must fall because the requisite state action is lacking.

2. Petitioners, likewise, are mistaken in claiming that they had "established property rights" prior to enactment of the Act of 1935. They erroneously cite *Krauczunas v. Hoban*, 221 Pa. 213, 70 A. 740 (1908) in support of this claim. It is clear, however, that Petitioners would not have had any "vested" property rights under Pennsylvania law prior to the Act of 1935 and that *Krauczunas* is not applicable.

The aggrieved parishioners, in *St. Casimir's*, had argued (as Petitioners do here) that they had vested rights in the church property which could not be taken away. 273 Pa. at 499, 117 A. at 220-221. In rejecting this argument, the Pennsylvania Supreme Court stated:

> Appellants treat the question before us, as one of property rights in the church vested in them, but the difficulty this meets with is, that there can be no property rights in church property, save through membership in the congregation, and this essential cord of membership, to tie themselves to the church property, petitioners do not now possess.

Id. The Court then distinguished *Krauczunas* stating:

> We know of no legislation which gives to a member of a congregation a property right in his membership therein. His rights in the church

> property flow from his membership. We are not in any way impairing the principle announced in *Krauczunas v. Hoban*, 221 Pa. 213, that church property belongs to the congregation of the church. The difficulty here is that appellants are no longer members of the congregation.

Id.

The Pennsylvania Supreme Court also examined the question of whether "the Act of 1935 because of its retrospective character take[s] property without due process of law, and divest[s] church lay members of vested property rights." *Canovaro*, 326 Pa. at 88. It held that the Act "does not constitute a divestment of a vested property right" and that it constitutionally "applie[s] with full force to all property acquired by religious societies either prior or subsequent to its enactment." *Id.* at 96. *See also, Post*, 326 Pa. at 103. Given that Petitioners had no vested property right at stake prior to enactment of the Act of 1935, that Act could not operate to impair any contractual rights of Petitioners in violation of Article I, Section 10, Clause 1. *See, Fletcher v. Peck*, 6 Cranch 87 (1810) (impairment of contract right exists where right has vested).

3. Petitioners also claim that the Act of 1935 is unconstitutional because it gives a foreign sovereign (Vatican City) "the power to change property law and legal standing in Pennsylvania" and "surrenders the State's law making authority to an absolute monarch, the ruler of Vatican City." Petition at 8.

Underlying each of Plaintiffs' claims in this regard is the mistaken notion that the Commonwealth has abdicated its authority to establish how property rights will be determined in Pennsylvania. In reality, the General

Assembly, by virtue of the Act of 1935, has exercised its power to determine how property rights of churches will be determined and has decided that they will be determined according to church law.[4] Petitioners are simply dissatisfied with the manner in which the Commonwealth has chosen to exercise its authority.

4. Petitioners' final argument is that, in providing that church property is to be disposed of according to church law, the state has impermissibly incorporated the law of the Roman Catholic Church into the civil law in violation of the Establishment Clause of the First Amendment. Petition at 8.

As evidenced by numerous decisions of this Court, the Commonwealth's recognition of the right of religious societies to form associations and govern themselves according to their own laws does not violate the Establishment Clause of the First Amendment to the United States Constitution.[5] Rather, such accommodation is required by the Free Exercise Clause. Thus, the Act of 1935 is not unconstitutional on these grounds.

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[4] This is not only a permissible choice of the Commonwealth, it is required by the Free Exercise Clause of the First Amendment which protects the right of churches to govern themselves according to their own Laws.

[5] See, e.g., *Hobbie v. Unemployment Appeals Commission*, 480 U.S. 136, 145 (1987) ("This Court has long recognized that the government may (and sometimes must) accommodate religious practices and that it may do so without violating the Establishment Clause."); *Corporation of Presiding Bishop v. Amos*, 483 U.S. 327, 337 (1987) ("A law is not unconstitutional simply because it *allows* churches to advance religion, which is their very purpose.")

CONCLUSION

The lower court correctly held that Petitioners lacked standing to bring this action and properly refused to address the federal constitutional questions raised by Petitioners. That decision is in complete conformity with the decisions of this Court and none of the considerations which would support a grant of review are present in this case. Accordingly, Respondent, Bishop Wuerl, respectfully requests that the Petition for Certiorari be denied.

Respectfully submitted,

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Dated: January 10, 1997